IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2007

CORAM

THE HON'BLE MR.JUSTICE K.RAVIRAJA PANDIAN
AND
THE HON'BLE MRS.JUSTICE CHITRA VENKATARAMAN

Tax Case (Appeal) No.325 OF 2004

The Commissioner of Income Tax,
Tamil Nadu-I, Madras ... Appellant

v.

M/s.Jayasakthi Benefit Fund Limited
7/12 LIC NH 1, Seran Street
Maraimalai Nagar
Chennai - 603 209. ... Respondent

Appeal preferred under Section 260A of the Income-tax Act, 1961 against the order of the Income-tax Appellate Tribunal, D Bench, Chennai dated 22.8.2003 made in I.T.A. No.167/Mds/2001 for the assessment year 1997-98 as against the Commissioner of Income Tax (Appeals) V, Chennai 34 dated 23.4.2000 made in IT/WT/GT/Appeal No.170/2000-2001 for the Assessment year 1997-1998 and as against the order of the Joint Commissioner of Income Tax, Range I, Chennai - 34 dated 6.4.2000 in CR. No. 64/2000-2001/RI for the assessment year 1997-98.

For Appellant : Mr.J.Naresh Kumar
Standing Counsel for IT

For Respondent : Mr.V.S.Jayakumar

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JUDGMENT

(Judgment of the Court was delivered
by K.RAVIRAJA PANDIAN, J.)

The appeal has been admitted on the following question of law:

> "Whether on the facts and in the circumstances of the case, the Appellate Tribunal has erred in deleting the penalty imposed under Section 271D of the Act by holding that the assessee did not contravene the provisions of Section 269SS of the Income-tax Act?

2. The relevant assessment year is 1997-98. The assessee is running a benefit Fund and doing finance business. The assessing officer initiated penalty proceedings under Section 271D of the Income-tax Act on the premise that the assessee had violated the provisions of Section 269SS of the Income-tax Act, 1961 by taking or accepting loans or deposits from various persons otherwise than account payee cheques or account payee drafts exceeding Rs.20,000/-. Though a detailed statement as to the nature and location of the business concern of the assessee and the reason for accepting the amounts not by account payee cheques and account payee drafts has been placed before the assessing officer, the assessing officer was of the opinion that the assessee was deserved to be penalised under Section 271D of the Income-tax Act, 1961 and thus imposed penalty of Rs.3,98,987/- on the assessee under section 271D of the Income Tax Act, 1961. On appeal, the first appellate authority on considering the statement filed by the assessee in accepting deposits from nine of the depositors and the reason for accepting the same in cash, was opined that the assessing officer had not given pointed details of the infringement of the relevant provisions by the persons with specific details so as to arrive at the amount of penalty. The Commissioner of Income Tax (Appeal) further observed that the order of the assessing officer imposing penalty was brief and not a speaking one, that the assessee has given details thereby shown reasonable cause as per the provisions of Section 273B for failure to comply with the provisions of Section 269SS. He further relying upon the decision of the Tribunal in the case of Commissioner of Income Tax v. Kundrathur Finance and Chit Company, (2006) 283 ITR 329 which was similar to the case on hand, deleted the penalty levied by the assessing officer. The Revenue carried the matter on appeal to the Income-tax Appellate Tribunal, which by its order dated 22.8.2003 affirmed the order of the Commissioner of Income-tax (Appeals) on all the reasoning given by the Commissioner of Income Tax (Appeals) and held that the Commissioner of Income-tax (Appeals) was perfectly justified in deleting the penalty under Section 271D and dismissed the appeal. The correctness of the same is put in issue in this appeal before us by formulating the above question of law.

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3. We heard the argument of the learned counsel on either side and perused the materials on record.

4. Before the Commissioner of Income-tax (Appeals), the assessee has stated nine instances of receipt of deposits over and above Rs.20,000/- by cash and has given details that the depositors were agriculturists and made the deposits from out of their savings from agricultural income and further stated that none of the persons from whom the deposits were received in cash were having any bank accounts. That was confirmed by the depositors concerned. The circumstances under which such deposits received have also been explained by the assessee by submitting that the assessee was located in Maraimalai Nagar which is a suburb of Chennai city and the residents in that area are mostly agriculturists and hardly having any bank account, that the assessee caters the needs of the agriculturists, labourers and house-wives, who do not have bank account and the assessee also stated that there was a turmoil in the finance business with the number of finance companies breaking down unable to repay the deposits taken from the public and in those compelling circumstances, the assessee had to oblige his customers by accepting the deposits in cash and refunding deposits in cash in order to establish credibility in business among the assessee's customers and further explained that the assessee was financing to agriculturists mainly and to people of very small means. The assessee could not insist on cheque payments for deposit as the depositors were not aware of the banking operations. Each of the depositor has also confirmed the deposit made by them out of their agricultural income or small savings and that they were not having any banking transactions.

5. Thus, it could be seen that the transactions were not camouflaged transactions or out of account transactions but bona fide transactions by persons of the avocation of agriculture and small traders and thus there was a reasonable cause for the failure. In this context, it is pertinent to refer Section 273B of the Income-tax Act, which provides for penalty not imposable in certain cases. The Section reads thus:

> "Penalty not to be imposed in certain cases.— Notwithstanding anything contained in the provisions of clause (b) of sub-section (1) of section 271, section 271A, section 271AA, section 271B, section 271BA, section 271BB, section 271C, section 271D, section 271E, section 271F, section 271FA, section 271FB, section 271G, clause (c) or clause (d) of sub-section (1) or sub-section (2) of section 272A, sub-section (1) of section 272AA or section 272B or sub-section (1) of section 272BB or sub-section (1) of section 272BBB or clause (b) of sub-section (1) or clause (b) or clause (c) of sub-section (2) of section 273, no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provisions if he proves that there was reasonable cause for the said failure." (Emphasis supplied).

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6. While upholding the constitutional validity of Section 269SS, the Apex Court in the case of ASST.DIRECTOR OF INSPECTION (INVESTIGATION) VS. KUM.A.B.SHANTHI reported in (2002) 255 ITR 258 has observed that the object of introducing section 269SS was to ensure that a taxpayer was not allowed to give false explanation for his unaccounted money, or if he made some false entries, he shall not escape by giving false explanation for the same. The main object of section 269SS was to curb this menace of making false entries in the account books and later giving an explanation for the same. The apex Court further observed that the undue hardship of the provisions of Section 271D which replaced section 276D providing for penalty was substantially mitigated by the inclusion of Section 273B providing that if there was a genuine and bona fide transaction and the taxpayer could not get a loan or deposit by account-payee cheque or demand draft for some bona fide reason, the authority vested with the power to impose penalty has a discretionary power not to levy the penalty.

7. In this case, the explanation offered with reference to the deposits received by the assessee has been accepted not only by the appellate authority - the Commissioner of Income-tax (Appeals), but also the Tribunal and deleted the penalty levied by the assessing officer. There is no material available on record for us to suspect or reject the transaction as not bona fide. Further, the Tribunal's decision relied on by the Commissioner of Income-tax (Appeal) as well as the Tribunal i.e., Kundrathur Finance and Chit Companeis case for deleting the penalty has been tested by the Division Bench of this Court in the case of COMMISSIONER OF INCOME-TAX VS. KUNDRATHUR FINANCE AND CHIT COMPANY reported in (2006) 283 ITR 329 and upheld the order of the Tribunal, which concluded that the reasoning given by the Finance Company for accepting deposits in cash was a genuine and bona fide transactions and held that if the transaction was a genuine and bona fide transaction, that the taxpayer could not get loan or deposit by account payee cheque or demand draft for a bona fide reason, the authorities are vested with the discretion not to levy penalty. The above decision of the Division Bench reported in (2006) 283 ITR 329 squarely covers the issue in this case also.

8. For the fore-going reasons, the appeal is dismissed and the order of the Tribunal is confirmed.

sd/-
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Assistant Registrar,
   Income Tax Appellate Tribunal
   Bench 'D' Rajaji Bhavan III Floor,
   Besant Nagar, Chennai.

2. The Commissioner of Income Tax (Appeals) V,
   121, Mahatma Gandhi Road, Chennai -34.

3. The Joint Commissioner of Income Tax,
   Range I, Chennai - 34.

4. The Commissioner of Income Tax,
   Tamilnadu - I, Madras.

+ one cc to Mr. Pushya Sitaraman, Advocate, SR.75125

+ one cc to Mr. V.S.Jayakumar, Advocate, SR.75753

ASM(CO)
DCP 07/01/2008

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